§ 488.56 Temporary waivers applicable to skilled nursing facilities.

(a) *Waiver of 7-day registered nurse requirement.* To the extent that § 483.30 of this chapter requires any skilled nursing facility to engage the services of a registered nurse more than 40 hours a week, the Secretary may waive such requirement for such periods as he deems appropriate if, based upon documented findings of the State agency, he determines that:

(1) Such facility is located in a rural area and the supply of skilled nursing facility services in such area is not sufficient to meet the needs of individual patients therein,

(2) Such facility has at least one fulltime registered nurse who is regularly on duty at such facility 40 hours a week, and

(3) Such facility (i) has only patients whose attending physicians have indicated (through physicians' orders or admission notes) that each such patient does not require the services of a registered nurse for a 48-hour period, or (ii) has made arrangements for a registered nurse or a physician to spend such time at the facility as is determined necessary by the patient's attending physician to provide necessary services on days when the regular fulltime registered nurse is not on duty.

(4) Such facility has made and continues to make a good faith effort to comply with the more than 40-hour registered nurse requirement, but such compliance is impeded by the unavailability of registered nurses in the area.

(b) *Waiver of medical director requirement.* To the extent that § 488.75(i) of this chapter requires any skilled nursing facility to engage the services of a medical director either part-time or full-time, the Secretary may waive such requirement for such periods as he deems appropriate if, based upon documented findings of the State agency, he determines that:

(1) Such facility is located in an area where the supply of physicians is not sufficient to permit compliance with this requirement without seriously reducing the availability of physician services within the area, and

(2) Such facility has made and continues to make a good faith effort to comply with § 488.75(i) of this chapter, but such compliance is impeded by the unavailability of physicians in the area.

[39 FR 35777, Oct. 3, 1974. Redesignated and amended at 42 FR 52826, Sept. 30, 1977. Further redesignated and amended at 53 FR 23100, June 17, 1988, and further amended at 56 FR 48879, Sept. 26, 1991; 57 FR 43925, Sept. 23, 1992]

§ 488.60 Special procedures for approving end stage renal disease facilities.

(a) *Consideration for approval.* An ESRD facility that wishes to be approved or that wishes an expansion of dialysis services to be approved for coverage, in accordance with part 494 of this chapter, must secure a determination by the Secretary. To secure a determination, the facility must submit the following documents and data for consideration by the Secretary:

(1) Certification by the State agency referred to in § 488.12 of this part.

(2) Data furnished by ESRD network organizations and recommendations of the Public Health Service concerning the facility's contribution to the ESRD services of the network.

(3) Data concerning the facility's compliance with professional norms and standards.

(4) Data pertaining to the facility's qualifications for approval or for any expansion of services.

(b) *Determining compliance with minimal utilization rates: Time limitations*—(1) *Unconditional status.* A facility which meets minimal utilization requirements will be assigned this status as long as it continues to meet these requirements.

(2) *Conditional status.* A conditional status may be granted to a facility for not more than four consecutive calendar years and will not be renewable (see § 405.2122(b) of this chapter). Its status may be examined each calendar year to ascertain its compliance with Subpart U.

(3) *Exception status.* Under unusual circumstances (see § 405.2122 (b) of this chapter) the Secretary may grant a time-limited exception to a facility which is not in compliance with the minimal utilization rate(s) for either unconditional status or conditional